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IN THE

# Supreme Court of the United States

October Term, 1957

No. 378

JAMES J. MATLES,

*Petitioner,*

v.

UNITED STATES OF AMERICA.

## REPLY TO GOVERNMENT'S OPPOSITION

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1. The Government's response to our contention that this Court should review the asserted power of the Government to coerce a witness to collaborate in his own denaturalization ignores far more than it argues. The Government apparently disagrees with the court below that this is an important question which must be authoritatively settled here, and nowhere alludes to the strong indications in *United States* v. *Minker*, 350 U. S. 179, that this is a weighty and unresolved issue.

2. Equally striking is the fact that the Government discusses Hamlet without a single mention of the melancholy Dane. The leading case in this field remains *Boyd* v. *United States*, 116 U. S. 616, a case which the Court has recently held is still the law. See *Ullmann* v. *United States*, 350 U. S. 422, 439. The Government's response has thus reemphasized the need for an assurance by this Court that

the denaturalization field is not exempt from the *Boyd* doctrine.

3. The Government makes the totally unsupported assertion that the right to refuse to be sworn at all has historically been limited to criminal prosecutions (Op. 10). We think that this is not only bad history (Pet. 12, 14), but bad law. *Boyd* v. *United States, supra.*

4. The Government has not only evaded the leading case in the field, but it relies on a host of cases dealing with deportation and the Congressional power over aliens, an area which, as we point out in our petition (p. 9), must be measured by a special yardstick.

5. The Government urges that our jurisdictional objection to the failure to file an affidavit at the time of the original action was waived (Op. 11). It brands our argument as frivolous because of a stipulation (R. 55) that the amended complaint shall be deemed to be substituted for the original complaint. But the lower court did not consider our contention as frivolous. Indeed, the court below did not dignify the stipulation argument—earnestly made by the Government—by treating it at all. And the panel of the lower court which decided *United States* v. *Lucchese* (App. 33), pending on petition for writ of certiorari, No. 450, this Term, decided that case on the authority of this one, because it thought that the contentions on this issue were identical.

The lower court's disregard of the Government's stipulation argument is hardly surprising in view of the fact the sole purpose of the stipulation was to acknowledge service of the amended complaint and to leave undisturbed a date set for argument of the motion to dismiss the complaint. Thus, the stipulation states (R. 55):

> "1. Service of a copy of the Amended Complaint herein is admitted and the amended complaint is

and shall be deemed to be substituted for the original complaint.

"2. The motion to dismiss the complaint dated May 15, 1953 now set for argument on September 23, 1953 at 10:30 a. m. be and shall be deemed to have been made with respect to the amended complaint."

The motion to dismiss thus made applicable to the amended complaint specifically attacked the jurisdiction of the court on the ground "that the complaint is not supported by an affidavit showing good cause * * * *" (R. 57). We are at a loss to know how, by preserving a jurisdictional objection in a stipulation designed to expedite the proceeding, petitioner somehow waived his objection.

6. The Government's contention that our challenge of the sufficiency of the affidavit was premature really assumes the very question which is in issue. The Court in *United States* v. *Zucca*, 351 U. S. 91, unambiguously held that it is not *any* affidavit which is a prerequisite to the filing of a denaturalization proceeding, but an affidavit of "good cause". If we are right in our reading of *Zucca*, then the trial court had no jurisdiction to proceed.

Moreover, this is not a case where a violation of an order threatens to disturb the *status quo*. On the contrary, here the Government filed a defective shotgun pleading to challenge a status enjoyed for some twenty years. What occasion was more appropriate for challenging the sufficiency of the affidavit than the moment when petitioner was called on to supply under coercion the very details which it is the duty of the Government to furnish him (cf. Pet. 14). Finally, it should be noted that the lower court,

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Had petitioner refused to agree to thus expediting the disposition of the pre-trial motions, he would have been charged with dilatory tactics. Compare Op. 6, 11, R. 140.

although it disagreed with our contention that the affidavit was not sufficient, disregarded the Government's contention that the attack upon the sufficiency of the affidavit was premature (App. 24-27).

Respectfully submitted,

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